

BRUNSWICK CITY SAFETY & ENVIRONMENT COMMITTEE

Agenda

SEPTEMBER 25, 2023

6:15 PM

**or Immediately Following
Planning & Zoning Committee**

1. Discussion Items
 - (a) **RES. NO. 77-2023** - An emergency resolution authorizing the City Manager to purchase two (2) LUCAS 3 Chest Compression Systems from Stryker Medical in an amount not to exceed \$39,492.44. - **1st Reading** (To be brought from Safety & Environment Committee, *Administration/Greg Glauner*)
 - (b) Tobacco Retail License (TRL)
 - (c) Ordinance amending Codified Ordinance 636.19
2. General Discussion
3. Adjournment

PROPOSED LEGISLATION



DATE: 9/25/2023

TO: Vice Mayor Nicholas Hanek and Members of City Council

FROM: Carl S. DeForest, City Manager
Greg Glauner

COPY: Mayor Ron Falconi

LEGISLATION: **RES. NO. 77-2023** - An emergency resolution authorizing the City Manager to purchase two (2) LUCAS 3 Chest Compression Systems from Stryker Medical in an amount not to exceed \$39,492.44. - **1st Reading** (To be brought from Safety & Environment Committee, Administration/Greg Glauner)

BACKGROUND: The Division of Fire is requesting to purchase two Lucas 3 Chest Compression Systems in the amount of \$39,492.44 from Stryker Medical.
The City of Brunswick, Division of Fire has been awarded a safety grant (Incident: 230531-000004) from the Ohio Bureau of Workers' Compensation in the amount of \$29,619.33. There is a 25% contribution match required from the City of Brunswick in the amount of \$9,873.11. The grant is intended to purchase two LUCAS Chest Compression Systems. This is a life-saving device utilized to perform automatic chest compressions when medical professionals are treating a patient in full-arrest. Presently, the Division of Fire is in possession of two such devices. This leaves the other two Medic Units without a device and therefore, when the units are called into service, Fire Medics perform manual compressions on a patient. This is less effective and prevents personnel from performing other life-saving measures. Stryker Medical is a sole-source provider for the LUCAS 3 Chest Compression System.

PURPOSE AND EXPLANATION: The LUCAS Chest Compression System is a life-saving device utilized to perform automatic chest compressions when medical professionals are treating a patient in full-arrest. Presently, the Division of Fire is in possession of two such devices. This leaves the other two Medic Units without a device and therefore, when the units are called into service, Fire Medics perform manual compressions on a patient. This is less effective and prevents personnel from performing other life-saving measures.

IMPLEMENTATION

SCHEDULE: Upon acceptance, this equipment will be ordered and immediately placed into service in the Division's medic units when received.

FINANCIAL INFORMATION:

**FINANCIAL
SUMMARY:**

The City of Brunswick's Division of Fire has been awarded a safety grant (Incident: 230531-000004) from the Ohio Bureau of Workers' Compensation. 75% of the eligible grant expenses (up to the \$29,619.33 BWC grant portion) will be posted to account#952-0510-56270. The City's 25% contribution match of \$9,873.11 in eligible expenses will be posted to account #952-0510-56256.

**RECOMMENDED
ACTION:**

One Reading	Yes
Two Readings	No
Three Readings	No
Emergency	Yes
Suspension of Rules	Yes

If emergency or suspension of the rules, why the request?
The City of Brunswick has 90 days from the date of award to purchase, train and implement the acquired equipment. The BWC award letter was received on August 2, 2023. With consideration to limited availability due to supply chain issues, the Division of Fire is recommending an Emergency/Suspension of the Rules so these devices may be ordered as soon as possible.

**ADDITIONAL
INFORMATION:**

Stryker Medical is a sole-source provider for the LUCAS 3 Chest Compression System.

CITY OF BRUNSWICK, OHIO
RESOLUTION NO. 77-2023

BY: Mr. Kuczma, Mr. Delsanter, Mrs. Piper

AN EMERGENCY RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE TWO (2) LUCAS 3 CHEST COMPRESSION SYSTEMS FROM STRYKER MEDICAL IN AN AMOUNT NOT TO EXCEED \$39,492.44.

WHEREAS: The Division of Fire has applied for and been approved for a Safety Intervention Grant from the Bureau of Workers' Compensation in the amount of \$29,619.33 (the "Grant") for the purchase of two (2) Lucas 3 Chest Compression Systems, which equipment must be purchased within ninety (90) days of receipt of the Grant;

WHEREAS: The local cost share to the City pursuant to the terms of the Grant is \$9,873.11; and

WHEREAS: Stryker Medical is the sole-source provider for the Lucas 3 Chest Compression System.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY RESOLVES:

SECTION 1: The City Manager is hereby authorized to purchase two (2) Lucas 3 Chest Compression Systems from Stryker Medical in an amount not to exceed \$39,492.44.

SECTION 2: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety or welfare, and for the additional reason that immediate passage is necessary to comply with the terms of the Grant. Therefore, the same shall be in full force and effect from and after its passage by the required number of votes or from the earliest time allowed by law.

PASSED: 1st Reading _____

Rules Suspended: AYES _____ NAYS _____

ADOPTED: _____ AYES _____ NAYS _____

ATTEST: _____
Clerk of Council
Laura E. Timura



lucas -- smr

Quote Number:	10456826	Remit to:	Stryker Medical
			P.O. Box 93308
Version:	1		Chicago, IL 60673-3308
Prepared For:	CITY OF BRUNSWICK FIRE DEPT	Rep:	Brandon Bucher
	Attn: Greg Glauner	Email:	brandon.bucher@stryker.com
	gglauner@brunswick.oh.us	Phone Number:	
	(330) 273-8046	Mobile:	+1 4803310979
Quote Date:	05/09/2023		
Expiration Date:	08/07/2023		

Delivery Address		End User - Shipping - Billing		Bill To Account	
Name:	CITY OF BRUNSWICK FIRE DEPT	Name:	CITY OF BRUNSWICK FIRE DEPT	Name:	CITY OF BRUNSWICK FIRE DEPT
Account #:	1267352	Account #:	1267352	Account #:	1267352
Address:	4383 CENTER RD	Address:	4383 CENTER RD	Address:	4383 CENTER RD
	BRUNSWICK		BRUNSWICK		BRUNSWICK
	Ohio 44212-3420		Ohio 44212-3420		Ohio 44212-3420

Equipment Products:

#	Product	Description	Qty	Sell Price	Total
1.0	99576-000063	LUCAS 3, v3.1 Chest Compression System, Includes Hard Shell Case, Slim Back Plate, (2) Patient Straps, (1) Stabilization Strap, (2) Suction Cups, (1) Rechargeable Battery and Instructions for use With Each Device	2	\$17,212.90	\$34,425.80
2.0	11576-000060	LUCAS Desk-Top Battery Charger	2	\$1,166.25	\$2,332.50
3.0	11576-000071	LUCAS External Power Supply	2	\$369.00	\$738.00
4.0	11576-000080	LUCAS 3 Battery - Dark Grey - Rechargeable LiPo	2	\$693.75	\$1,387.50

Price Totals:

Estimated Sales Tax (0.000%):	\$0.00
Freight/Shipping:	\$608.64
Grand Total:	\$39,492.44

Comments:

Prices: In effect for 30 days

Terms: Net 30 Days



lucas -- smr

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	(330) 273-8046	Mobile:	+1 4803310979
Quote Date:	05/09/2023		
Expiration Date:	08/07/2023		

Contact your local Sales Representative for more information about our flexible payment options.

Capital Terms and Conditions:

Deal Consummation: This is a quote and not a commitment. This quote is subject to final credit, pricing, and documentation approval. Legal documentation must be signed before your equipment can be delivered. Documentation will be provided upon completion of our review process and your selection of a payment schedule. Confidentiality Notice: Recipient will not disclose to any third party the terms of this quote or any other information, including any pricing or discounts, offered to be provided by Stryker to Recipient in connection with this quote, without Stryker's prior written approval, except as may be requested by law or by lawful order of any applicable government agency. A copy of Stryker Medical's Acute Care capital terms and conditions can be found at https://techweb.stryker.com/Terms_Conditions/index.html. A copy of Stryker Medical's Emergency Care capital terms and conditions can be found at <https://www.strykeremergencycare.com/terms>.

April 2022

Stryker is the sole-source provider in the Hospital (hospitals and hospital-owned facilities), Emergency Response Services and Emergency Response Training (paramedics, professional and volunteer fire) markets in the U.S. and Canada for the following products:

- New LIFEPAK® 15 monitor/defibrillators
- New LIFEPAK 20e defibrillator/monitors
- New LIFEPAK CR2 automated external defibrillators
- New LIFEPAK 1000 automated external defibrillators
- New LUCAS® chest compression system
- CODE-STAT™ data review software and service

Stryker is the sole-source provider in all markets for the following products and services:

- RELI™ (Refurbished Equipment from the Lifesaving Innovators) devices
- LIFENET® system and related software
- ACLS (non-clinical) LIFEPAK defibrillator/monitors
- LIFELINKcentral™ Government Campus Solution
- MultiTech 4G and Titan III gateways
- Factory-authorized inspection and repair services which include repair parts, upgrades, inspections and repairs

Stryker does not authorize any third parties to sell these products or services in the markets listed above. We will not fulfill orders placed by non-authorized businesses seeking to resell our products or services. If you have questions, please feel free to contact your local Stryker customer service representative at 800.442.1142.

Sincerely,



Matt Van Der Wende, Vice President, Americas Sales

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Stryker or its affiliated entities own, use, or have applied for the following trademarks or services marks: LIFELINKcentral, LIFEPAK, LUCAS, CODE-STAT, RELI, LIFENET, Stryker. All other trademarks are trademarks of their respective owners or holders. The absence of a product, feature, or service name, or logo from this list does not constitute a waiver of Stryker's trademark or other intellectual property rights concerning that name or logo.



**Bureau of Workers'
Compensation**

Division of Safety & Hygiene
30 W. Spring St., 25th Floor
Columbus, OH 43215-2256

Governor **Mike DeWine**
Administrator/CEO **John Logue**

www.bwc.ohio.gov
1-800-644-6292
Fax: 1-866-336-8352

Policy number:

Application number:

**** Please DO NOT STRAY FROM THE BUDGET**, be advised that you may not use grant money for safety intervention equipment that has already been purchased. This includes any or all of the following procurement activities: Ordered equipment; Received equipment; Received paid equipment. If you make the purchase/payment prior to receipt of this letter, BWC will consider the purchase retroactive and BWC may request return of the funds.

You must complete the action steps as listed below. All of them should be completed within the BWC Grant Management Portal:

- Within 90 days after the grant check or EFT, purchase and implement the approved intervention equipment/services.
- Within 120 days after the grant check or EFT, submit proof of spending and purchase documentation for all approved equipment/services.
- Within one year after the equipment is placed into service, complete the required case study.

Lastly, please ensure that when submitting your proof of spending and proof of payment documentation that your invoice is exact to the quote previously submitted. Including items that were not pre-approved in this grant or significantly changing their descriptions could delay the reconciliation process.

If you have any questions or concerns, please contact Safety Grants via The Ohio BWC Grant Management Portal. Thank you for taking the initiative to provide a safe work environment for your employees.

Sincerely,

Superintendent, Division of Safety & Hygiene

Enclosure

cc: BWC Finance Division



Section V: Budget

Step 1: Please provide the proposed budget for the project.

Note: You may only use the safety intervention grant to purchase ergonomic, safety or industrial hygiene equipment. You may not use the safety intervention grant for recouping the cost of any prior or ongoing interventions, or for rented or leased equipment. In addition, you may not use a safety intervention grant to pay for salaries, wages, internal labor, or any costs associated with preparing the application. You must make all grant purchases and implement the intervention equipment within ninety (90) days after the date on the BWC grant check or the electronic funds transfer. Note all itemized expenses associated with the project. Indicate exact costs and do not round figures. All budgets MUST have vendor price quotes attached for each individual item. You must subtract all discounts and equipment trade-ins from the project total.

Item	Quantity	Cost	Total
Lucas 3 chest compression system	2	\$17,212.90	\$34,425.80
Lucas Desk-Top battery charger	2	\$1,166.25	\$2,332.50
Lucas external power supply	2	\$369.00	\$738.00
Lucas 3 battery- dark grey- Rechargeable LiPo	2	\$693.75	\$1,387.50

Subtotal

Freight

Tax

Less all discounts and trade-in amounts.

Total budget

Step 2: To determine the grant amount you are requesting, please complete the formula below.

Total amount of project (from table above) A

Total amount supplied by BWC, (either \$40,000 or less, or remaining funds in eligibility cycle) B = A x 0.75

Total amount supplied by the employer A-B

Do you have ownership, partnership or any other affiliation with the vendor of the equipment being purchased?

If yes, please explain.

Are you planning to finance your portion of the grant project? Yes ☐ No ☐ If yes, you must provide a copy of the loan agreement with your receipt documentation once you receive the grant funds and make your purchase.

By my signature, I agree to fully comply with the terms and conditions of the program and to use all funds solely for the purposes intended. I further understand I may be subject to civil, criminal and/or administrative penalties as the result of any false, fictitious, misleading, or fraudulent statements. I understand if funds are not used, misused, misapplied, or misappropriated, or are used for purchases and/or services not associated with the approved budget and itemized proposal submitted, that I may be subject to civil, criminal, and administrative penalties.

Name of duly authorized representative (please print)

Signature of duly authorized representative

Title

Employer name BWC policy number



Section VI. AGREEMENT between OHIO BUREAU OF WORKERS' COMPENSATION

and _____
Employer's Full Legal Name

Agreement between the Ohio Bureau of Workers' Compensation and Employer

This is an agreement by and between _____ (hereinafter, "Employer"), with its principal place
Employer's Full Legal Name
of business located at _____, Ohio _____, and the State of Ohio, Bureau of Workers' Compensation
Address ZIP code

(hereinafter, "BWC"), having offices at 30 W. Spring St., Columbus, OH 43215-2256, entered into the day, month and year set out below.

Whereas, the administrator of workers' compensation may issue a grant to defray the costs incurred by an employer who elects to participate in the safety intervention grant program, pursuant to Ohio Administrative Code Rule (OAC) 4123-17-56, wherein an employer may receive grant funds for projects which substantially reduce or eliminate the risk of workplace injuries and illnesses.

Therefore, for good and valuable consideration, the sufficiency of which is acknowledged, the parties mutually agree to the following conditions.

Eligibility — Acceptance of Employer into the safety intervention grant program is contingent upon Employer's: (a) submission and approval of an application, (b) demonstrated need for intervention, (c) having active Ohio workers' compensation coverage, and (d) being current with respect to payroll reporting and payments due to any fund administered by BWC as of the date of execution of this agreement and for its duration.

Distribution of Grant Funds — Subject to the conditions precedent in this agreement and subject to available BWC resources, Employer and BWC mutually understand and agree that the total sum of the grant to be issued by BWC shall not exceed a 3-to-1 ratio of the funds contributed by Employer, whether a public or private employer, and that the maximum grant amount shall not exceed \$40,000. Employer must contribute \$13,333.33 in order to receive the maximum grant amount of \$40,000. Employer understands and acknowledges that BWC will not issue a grant matching any expenditures that exceed \$13,333.33. The \$40,000 safety grant is the maximum per eligibility cycle. If Employer has not received the maximum amount of money available through the safety grant program during their eligibility cycle, Employer may reapply and have its application approved to enter into another agreement until Employer has received a total of \$40,000 for that cycle.

Employer Responsibilities — Employer, in consideration of a grant given to it, promises to fully comply with the program requirements as outlined in the Application and Instructions and OAC 4123-17-56, all of which are fully incorporated herein by reference. **Employer will be responsible for using the awarded grant in the manner for which it is intended and will be required to provide BWC with documentation. This documentation may include, but is not limited to, original invoices, canceled checks, and periodic reports to confirm that all funds were spent and applied toward the approved intervention.** Employer understands that approved safety intervention equipment may not be rented or leased. Employer agrees to allow a BWC representative to conduct risk factor assessments. Further, Employer agrees not to eliminate jobs due to participation in the safety intervention grant program.

All interventions must receive approval prior to purchase to qualify for the grant, and any proposed changes must be agreed to by BWC prior to making the change. Employer agrees to allow BWC to publish safety intervention grant results including, but not limited to, data, videos, specifications, or photos for the purposes of illustrating, educating, and training employers and employees.

Time of Performance — Employer must make all equipment purchases and implement the approved intervention equipment within ninety (90) days of BWC issuing the grant check or electronic fund transfer. BWC will consider allowing additional time, up to a maximum of 90 days, upon the request of Employer. However, the extension must be made within the initial 90 day period. No later than thirty (30) days following the 90 day purchase period, Employer must provide BWC the following information: (a) itemized expense report, (b) original paid invoices pertaining to all intervention purposes, and (c) copies of all cancelled checks or other documentation to support that all invoices associated with the interventions were paid in full.

Employer shall provide BWC a one-year case study report which detail the number of affected population and list claim numbers affected by the intervention, if any. The one-year case study is due within 30 days of the reporting period. The one-year case study report is to be completed electronically by Employer. If the one-year case study report is not filed, or if the report is not written as described in the application, Employer shall be liable to repay the full amount of the grant.

Disqualification — If for any reason Employer fails to satisfy one or more of the criteria established in the Application and Instructions, OAC 4123-17-56, and this agreement, including, but not limited to, the requirement of maintaining active coverage, timely payments thereof, and the obligations described in Employer Responsibilities and Time of Performance sections, Employer may be disqualified from the program. **Disqualification will result in the termination of BWC's obligations under this agreement. BWC reserves the right to recover grant funds by one or more of the following methods: billing Employer for the grant funds received, forwarding Employer's information to the Office of the Attorney General of Ohio for collection, set-off, recoupment, or other administrative, civil, or legal remedy.**

If Employer merges or combines its business after receiving a grant, but before completing the one year of measurement reporting, the BWC Successorship Liability Policy will go into effect. Employer is responsible for notifying the successor employer of the obligations under the safety intervention grant program. The successor employer may be liable to repay any and all previously paid grant funds if these obligations are not met.



Disclaimer — If implemented correctly by Employer, the goal of the safety intervention grant program is to substantially reduce or eliminate injury and illness in the workplace and, hence, claims associated with the affected processes. BWC does not guarantee or warrant that the implementation of such a plan will result in a substantial reduction or elimination of injuries and illnesses in the workplace. The exclusive remedy shall be pursuant to workers' compensation laws of the appropriate jurisdiction. In no event, shall BWC be liable for any damages in contract or in tort.

Ohio elections law — Employer hereby certifies that no applicable party listed in Divisions (I), (J), (Y) and (Z) of O.R.C. Section 3517.13 has made contributions in excess of the limitations specified under Divisions (I), (J), (Y) and (Z) of O.R.C. Section 3517.13.

Conflicts of interest and ethics compliance certification — Employer affirms that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict, in any manner or degree, with the performance of services which are required to be performed under any resulting Contract. In addition, Employer affirms that a person who is or may become an agent of Employer, not having such interest upon execution of this Contract shall likewise advise the BWC in the event it acquires such interest during the course of this Contract.

Employer agrees to adhere to all ethics laws contained in Chapters 102 and 2921 of the Ohio Revised Code governing ethical behavior,

understands that such provisions apply to persons doing or seeking to do business with the Bureau, and agrees to act in accordance with the requirements of such provisions. Employer warrants that it has not paid and will not pay, has not given and will not give, any remuneration or thing of value directly or indirectly to the BWC or any of its board members, officers, employees, or agents, or any third party in any of the engagements of this Agreement or otherwise, including, but not limited to a finder's fee, cash solicitation fee, or a fee for consulting, lobbying or otherwise.

Non-Discrimination and Equal Employment Opportunity: Employer will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Ohio Revised Code Section 125.111 and all related Executive Orders. The State encourages Employer to purchase goods and services from Minority Business Enterprise (MBE) and Encouraging Diversity, Growth and Equity (EDGE) vendors.

Authority — The person signing below for Employer states that he or she is either the owner, chief executive officer, chief financial officer, plant manager or other person having fiduciary responsibilities with Employer; and Employer agrees that the signer or his, or her successor, will have the authority to oversee carrying out Employer's responsibilities for one year after BWC issues the funds. The signer's authority shall continue until Employer notifies BWC of the name of the successor.

☐

By initialing this box, Employer agrees that prior purchases have not been made and will not be made prior to approval. Employer also confirms understanding that all grant approved purchases are to be purchased and implemented within 90 days after the date on the BWC grant check or the date of the electronic fund transfer. Additionally, any changes to the original intervention must receive prior approval by BWC.

By my signature, I agree to fully comply with the terms and conditions of this agreement and the program and to use all funds solely for the purposes intended. I further understand I may be subject to civil, criminal and/or administrative penalties as the result of any false, fictitious, misleading, or fraudulent statements. I understand if funds are not used, misused, misapplied, misappropriated, or are used for purchases or services not associated with the approved budget and itemized proposal submitted, that I may be subject to civil, criminal, and administrative penalties.

Modifications: The parties may, in writing and by mutual agreement, amend, modify, supplement or rescind the terms of this agreement.

In witness whereof, the parties hereunto affix their signatures this day of _____, 20_____.
Month Day

Employer's full legal name _____

Federal tax I.D. _____

Title _____

Name (please print) _____

**State of Ohio, Bureau of Workers' Compensation
Safety Intervention Grant Program**

Signature _____

Safety Grant Program

Safety Intervention Grant (SIG) Scoresheet

Employer Name	Policy Number	Application Number	Intervention	Grant Amount	Pass/Fail

Approvals

X

Committee Member 1

X

Committee Member 2

X

Committee Member 3

X

Superintendent

1
CITY OF BRUNSWICK, OHIO
ORDINANCE NO. _____

BY:

AN EMERGENCY ORDINANCE REPEALING AND REPLACING SECTION 636.19 OF THE CITY OF BRUNSWICK CODIFIED ORDINANCES.

WHEREAS: It is estimated that 95% of all adult smokers began smoking before the age of twenty-one.

WHEREAS: An earlier age of initiation is associated with greater levels of nicotine dependence and greater intensity and persistence of smoking beyond adolescence and through adulthood.

WHEREAS: The parts of the brain most responsible for decision making, impulse control, sensation seeking, and susceptibility to peer pressure continue to develop and change through young adulthood, and adolescent brains are uniquely vulnerable to the effects of nicotine and nicotine addiction.

WHEREAS: Data from the 2021 National Youth Tobacco Survey on the use of e-cigarettes shows that over 11% of, or more than two million, U.S. middle and high school students reported current e-cigarette use, where almost 40% used e-cigarettes on a frequent basis and almost 85% of e-cigarette uses reported using flavored products.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY ORDAINS:

SECTION 1: That the existing version of Section 636.19 of the Codified Ordinances is hereby replaced in its entirety to read as follows:

“636.19 ILLEGAL DISTRIBUTION OF TOBACCO PRODUCTS.

(A) Definitions. For the purposes of this Section, the following definitions shall apply:

- (1) “Distribute” means giving, providing, or delivering Tobacco Products.
- (2) “Electronic Smoking Device” means any device that may be used to deliver any aerosolized or vaporized nicotine or any other substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic Smoking Device includes any component, part, or accessory to such a device, whether or not sold separately, and also includes any substance intended to be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic Smoking Device does not include

drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

- (3) “Flavored Shisha Tobacco Product” means a Flavored Tobacco Product smoked or intended to be smoked in a Hookah. Flavored Shisha Tobacco Product includes, and may be referred to as, Hookah tobacco, waterpipe tobacco, maassel, narghile and argileh.
- (4) “Flavored Tobacco Product” means any Tobacco Product that imparts a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary customer either prior to, or during the consumption of, a Tobacco Product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice.
- (5) “Hookah” means a type of water pipe that is used to smoke Flavored Shisha Tobacco Products, which has a long, flexible tube to draw aerosol through water. This device has components that may include heads, stems, bowls, and hoses.
- (6) “Hookah Bar” means a restaurant, tavern, brew pub, club, nightclub, bar or any food service operation or retail food establishment that generates revenue from the sale for on-site consumption of Flavored Shisha Tobacco Products or Tobacco Products used with a Hookah; provided, that the restaurant, tavern, brew pub, club, nightclub, bar, or food service operation or retail food establishment has a valid smoking exemption from the Ohio Department of Health pursuant to Section 3794.03 of the Ohio Revised Code and Rule 3701-52-05 of the Ohio Administrative Code, as same may be amended from time to time.
- (7) “Purchaser” means any person who obtains or attempts to obtain a Tobacco Product.
- (8) “Sale”, “Sell” or “Sold” means transferring, or offering or attempting to transfer, a Tobacco Product for money, trade, barter, exchange or other consideration.
- (9) “Self-Service Display” means the open display or storage of Tobacco Products in a manner that is physically accessible in any way to the general public without the assistance of the Tobacco Retailer or its agent, employee, or representative or without a direct person-to-person transfer between the Purchaser and the Tobacco Retailer or its agent, employee or representative.
- (10) “Tobacco” or “Tobacco Product(s)” means: (a) any product containing, made of, or derived from tobacco or containing any form of nicotine that is intended for human consumption or is likely to be consumed, whether smoked,

heated, chewed, dissolved, inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, cigar, pipe tobacco, chewing tobacco, snuff or snus; (b) any Electronic Smoking Device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; (c) any component, part, or accessory of (a) or (b), whether or not any of these contain tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, or pipes. Tobacco Product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

- (11) “Tobacco Retailer” means any individual, firm, partnership, joint venture, association, joint stock company, corporation, unincorporated business entity, or any other group acting as a unit that owns a business where Tobacco Products are available for sale to the general public. Tobacco Retailer, as used herein, includes any manufacturer, producer, distributor or wholesaler of Tobacco Products. Tobacco Retailer does not mean the employees or agents of an owner of a business where Tobacco Products are available to the general public.

- (12) “Vending Machine” has the same meaning as “Coin Machine” in Ohio Revised Code Section 2913.01, as same may be amended from time to time.

(B) Restrictions on the Sale of Tobacco Products.

- (1) Age Restriction. No Tobacco Retailer, or its agent, employee or representative, nor any other person, shall sell or distribute any Tobacco Product to any person under twenty-one years of age, except if a person is participating in a research protocol described in Sections (C)(1)(a) and (C)(2) herein and meets the requirements provided therein.
- (2) Age Verification. Tobacco Retailers or their agents, employees or representatives shall verify by means of government-issued photographic identification that the Purchaser is at least twenty-one years of age. No Tobacco Retailer, or its agents, employees, or representatives, nor any other person, shall sell or distribute any Tobacco Product to any individual who does not demonstrate, through a government-issued photographic identification, that the individual is at least twenty-one years of age. Verification is not required for a person over thirty years of age; provided however, that the Purchaser appeared to be thirty years of age or older shall not constitute a defense to a violation of this Section in any proceeding alleging the sale of Tobacco Products to an individual under the age of twenty-one.
- (3) Signage. Signs reading “THE SALE OF TOBACCO PRODUCTS TO

PERSONS UNDER 21 IS PROHIBITED BY LAW” shall be legibly printed in letters at least one inch high and shall be posted clearly and conspicuously in every location where Tobacco Products are sold. Selling Tobacco Products in any place that does not have a sign consistent with this Section is prohibited by law and punishable as provided herein.

- (4) Flavored Tobacco Product Sales Prohibition. It shall be unlawful for a Tobacco Retailer or its agent, employee or representative, or any other person, to sell or distribute any Flavored Tobacco Product. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, manufacturer, or any employee or agent of a Tobacco Retailer or manufacturer: (a) makes a public statement or claim that a Tobacco Product imparts a taste or smell other than the taste or smell of tobacco; or (b) uses text, images, or coloring on the Tobacco product’s labeling or packaging to explicitly or implicitly indicate that the Tobacco Product imparts a taste or smell other than the taste or smell of tobacco; or (c) takes action directed to consumers that would reasonably be expected to cause consumers to believe that the Tobacco Product imparts a taste or smell other than the taste or smell of tobacco.
- (5) Exception for Flavored Shisha Tobacco Products. The prohibition under Section (B)(4) of this Section does not apply to Flavored Shisha Tobacco Products when consumed on-site in a Hookah Bar.
- (6) Self-Service Display Restrictions. No Tobacco Retailer or its agent, employee or representative, not any other person, shall sell or distribute Tobacco Products by or from a Self-Service Display except in places where person under the age of twenty-one are not permitted access at any time.
- (7) False Information. No Tobacco Retailer or its agent, employee or representative, nor any other person, shall knowingly furnish any false information regarding the name, age, or other identification of any person under twenty-one years of age with purposes to sell or distribute Tobacco Products.
- (8) No Tobacco Retailer or its agent, employee or representative, not any other person, shall manufacture, sell or distribute any pack or other container of cigarettes containing fewer than twenty cigarettes or any package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco.
- (9) No Tobacco Retailer or its agent, employee or representative, nor any other person, shall sell any Tobacco Product in a smaller quantity than that placed in the pack or container by the manufacturer.

(10) No Tobacco Retailer or its agent, employee or representative, nor any other person, shall sell or distribute any Tobacco Product in a smaller quantity than was intended for retail when the Tobacco Product was packaged by the manufacturer.

(11) No Tobacco Retailer or its agent, employee or representative, nor any other person, shall sell or offer to sell any Tobacco Product by or from a vending machine except in the following locations:

(a) An area either within a factory, business, office, or other place not open to the general public or to which persons under the age of twenty-one are not permitted access at any time.

(b) In any other place not identified in Section 11(a) herein upon all of the following conditions:

(i) The vending machine is located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of such person, so that all Tobacco Products sold from the vending machine will be readily observed by the person who owns or operates the place or an employee of such person. For the purposes of this Section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area, shall not be considered to be located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of such person.

(ii) The vending machine is inaccessible to the public when the place is closed.

(iii) A clearly visible notice is posted in the area where the vending machine is located that states the following in letters that are legibly printed and at least one-half inch high: "It is illegal for any person under the age of 21 to purchase Tobacco Products."

(C) Affirmative Defenses.

(1) The following are affirmative defenses to a charge under Sections (B)(1) and (B)(2) hereof:

(a) The parent, guardian, or legal custodian of a person under the age of eighteen has consented in writing to a person under the age of eighteen participating in research protocol, or a person over the age of eighteen, but

under the age of twenty-one, has consented in writing, on his or her own behalf, to participate in research protocol.

(b) The person who has sold or distributed Tobacco Products to a person under the age of twenty-one is a parent, spouse who is twenty-one years of age or older, or legal guardian of the person who is under the age of twenty-one.

(2) It is not a violation of Sections (B)(1) or (B)(2) hereof to sell or distribute Tobacco Products to a person under the age of twenty-one while the person under the age of twenty-one is participating in a research protocol if all of the following apply:

(a) The parent, guardian, or legal custodian of a person under the age of eighteen has consented in writing to a person under the age of eighteen participating in the research protocol, or a person over the age of eighteen, but under the age of twenty-one, has consented in writing, on his or her own behalf, to participate in the research protocol.

(b) An institutional human subjects protection review board, or equivalent entity, has approved the research protocol.

(c) The person under the age of twenty-one is participating in the research protocol at the facility or location specified in the research protocol.

(D) Severability. The provisions of this Section are severable, and if any provision, clause, sentence or paragraph of this Section or the application thereof to any person or circumstances are held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such a ruling shall not affect the other parts of this Section that can be given effect.

(E) Penalty. Whoever violates Section (B) is guilty of illegal distribution of Tobacco Products. Except as otherwise provided herein, illegal distribution of Tobacco Products is a misdemeanor of the fourth degree. If the offender has previously been convicted of a violation of Section (B), or any previous version of the Codified Ordinances relating to illegal distribution of Tobacco Products, then illegal distribution of Tobacco Products is a misdemeanor of the third degree.”

SECTION 2: The provisions of this Ordinance prohibiting the sale of Flavored Tobacco Products shall be effective and enforceable one hundred eighty (180) days after the effective date of this Ordinance. All other provisions contained herein shall be effective and enforceable upon the effective date of this Ordinance.

SECTION 3: Upon the effective date of this Ordinance, existing Section 636.19 shall be

repealed in its entirety and replaced with the provisions contained in this Ordinance.

SECTION 4: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare of the City and its residents and property owners and for the additional reason that it is necessary to immediately update the Codified Ordinances to prohibit the sale of Flavored Tobacco Products in the City of Brunswick. Therefore, the same shall be in full force and effect from and after its passage by the required number of votes or from the earliest time allowed by law.

PASSED: 1st Reading _____

Rules Suspended: AYES _____ NAYS _____

ADOPTED: _____ AYES _____ NAYS _____

ATTEST: _____
 Clerk of Council
 Laura E. Timura